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UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF CALIFORNIA

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11 M.H., a minor, by and through his  
12 guardian ad litem, TIFFANY  
ARTERBERRY, AIRIONNA BLINK.

13 Plaintiffs,

14 v.

15 KERN HIGH SCHOOL DISTRICT, et  
16 al.,

17 Defendants.

Case No. 1:23-cv-00531-ADA-CDB

**ORDER GRANTING UNOPPOSED  
MOTION TO APPOINT GUARDIAN AD  
LITEM FOR M.H.**

(Doc. 32)

18 On April 4, 2023, Plaintiffs M.H. (a minor) and Airionna Blink filed a complaint against  
19 Defendants Kern High School District, East Bakersfield High School, and Mark Calvillo.<sup>1</sup> (Doc.  
20 1). According to the operative Second Amended Complaint, Plaintiffs were sitting on a bench at  
21 East Bakersfield High School when a male security guard questioned them about their whereabouts.  
22 (Doc. 15 ¶ 13). Plaintiffs replied that they were waiting for their uncle to pick them up.

23 Later, a different adult male security guard approached Plaintiffs and told them go “get the  
24 f— up” and go to class. Plaintiffs explained to the security guard that they were waiting to get  
25 picked up, but then the security guard allegedly called M.H. a racial slur and began having a verbal  
26 altercation with Plaintiffs. *Id.* ¶ 14.

27 The second security guard called for additional security. School Police Officer Mark

28 \_\_\_\_\_  
<sup>1</sup> Defendant East Bakersfield High School has since been dismissed on August 23, 2023. (Doc. 23).

1 Calvillo and additional security guards arrived and told Plaintiffs that they needed to go to the  
2 office. *Id.* ¶ 16. Once Plaintiffs arrived in the office, M.H. stood up to get his inhaler and Defendant  
3 Calvillo violently tackled and slammed him onto the ground. *Id.* ¶ 22. Plaintiff Blink was also  
4 pepper sprayed and slammed against the wall.

5 Plaintiffs were transported to a detention facility and were released from police custody  
6 approximately six hours later. *Id.* ¶ 26. Plaintiffs were both criminally charged, but the charges  
7 were allegedly resolved in their favor. *Id.* ¶ 27. Plaintiffs allege that M.H. suffered a concussion,  
8 vomiting, severe physical pain, mental anguish, loss of educational and development opportunities  
9 and other forms of damage due to Defendants' conduct. *Id.* ¶ 28.

10 On August 22, 2023, because Plaintiffs' pleadings referred to the appointment of a guardian  
11 ad litem but the Court was unaware of any information indicating such had been appointed  
12 previously, the Court ordered Plaintiffs to file an application seeking appointment of guardian ad  
13 litem. (Doc. 22). Currently before the Court is Plaintiff M.H.'s renewed motion to appoint his  
14 mother, Tiffany Arterberry, as his guardian ad litem. (Doc. 32). Counsel for Plaintiffs attests he  
15 met and conferred with counsel for Defendants, who indicated that they did not oppose the proposed  
16 appointment. *Id.* at 2.

17 Pursuant to Rule 17 of the Federal Rules of Civil Procedure, a representative of a minor or  
18 incompetent person may sue or defend on the minor or incompetent person's behalf. Fed. R. Civ.  
19 P. 17(c). In addition, a court "must appoint a guardian ad litem - or issue another appropriate  
20 order - to protect a minor or incompetent person who is unrepresented in an action." *Id.* The  
21 capacity of an individual to sue is determined "by the law of the individual's domicile." Fed. R.  
22 Civ. P. 17(b)(1).

23 Under California law, an individual under the age of 18 is a minor, and a minor may bring  
24 suit if a guardian conducts the proceedings. Cal. Fam. Code §§ 6502, 6601. The Court may appoint  
25 a guardian ad litem to represent the minor's interests. Cal. Code Civ. P. § 372(a). To evaluate  
26 whether to appoint a particular guardian ad litem, the Court must consider whether the minor and  
27 the guardian have divergent interests. Cal. Code Civ. P. § 372(b)(1).

28 The appointment of the guardian ad litem is more than a mere formality. *United States v.*

1       *30.64 Acres of Land, More or Less, Situated in Klickitat Cty., State of Wash.*, 795 F.2d 796, 805  
 2       (9th Cir. 1986). A Court shall take whatever measures it deems appropriate to protect the interests  
 3       of the individual during the litigation. *See id.* (noting, “[a] guardian ad litem is authorized to act on  
 4       behalf of his ward and may make all appropriate decisions in the course of specific litigation.”).  
 5       The guardian need not possess any special qualifications, but must “be truly dedicated to the best  
 6       interests of the person on whose behalf he seeks to litigate.” *AT&T Mobility, LLC v. Yeager*, 143  
 7       F. Supp.3d 1042, 1054 (E.D. Cal. 2015) (quoting *Whitmore v. Arkansas*, 495 U.S. 149, 163-64  
 8       (1990)). This means that the guardian cannot carry any impermissible conflict of interest with the  
 9       ward. Courts also consider the candidate’s “experience, objectivity and expertise” or previous  
 10      relationship with the ward. *Id.* (citations omitted).

11           Further, the Local Rules of the Eastern District of California provide:

12           (a) Appointment of Representative or Guardian. Upon commencement of an action or  
 13       upon initial appearance in defense of an action by or on behalf of a minor or  
 14       incompetent person, the attorney representing the minor or incompetent person  
 15       shall present (1) appropriate evidence of the appointment of a representative for the  
 16       minor or incompetent person under state law or (2) a motion for the appointment  
 17       of a guardian ad litem by the Court, or (3) a showing satisfactory to the Court that  
 18       no such appointment is necessary to ensure adequate representation of the minor or  
 19       incompetent person. *See Fed. R. Civ. P. 17(c);*  
 20           ....

21           (c) Disclosure of Attorney’s Interest. When the minor or incompetent is represented by  
 22       an attorney, it shall be disclosed to the Court by whom and the terms under which  
 23       the attorney was employed; whether the attorney became involved in the  
 24       application at the instance of the party against whom the causes of action are  
 25       asserted, directly or indirectly; whether the attorney stands in any relationship to  
 26       that party; and whether the attorney has received or expects to receive any  
 27       compensation, from whom, and the amount. (E.D. Cal. Local Rule 202).

28           The decision to appoint a guardian ad litem “must normally be left to the sound discretion  
 29       of the trial court.” *30.64 Acres of Land*, 795 F.2d at 804. Fit parents are presumed to act in the  
 30       best interests of their children. *Troxel v. Granville*, 530 U.S. 57, 66 (2000). However, “if the parent  
 31       has an actual or potential conflict of interest with [their] child, the parent has no right to control or  
 32       influence the child’s litigation.” *Molesky for J.M. v. Carillo*, No. 1:22-cv-1567-ADA-CDB, 2022  
 33       WL 17584396, \*1 (E.D. Cal. Dec. 12, 2022) (quoting *Williams v. Super. Ct. of San Diego*, 147 Cal.

1 App.4th 36, 50 (2007)).

2 DISCUSSION

3 Plaintiffs have filed a copy of M.H.'s birth certificate under seal. (Doc. 30). The birth  
4 certificate supports Plaintiffs' assertion that M.H. is a minor. The proposed guardian ad litem,  
5 Tiffany Arterberry, represents that she is competent, responsible, able, and willing to serve as the  
6 guardian ad litem. (Doc. 32 pp. 2-3). As M.H.'s parent, Tiffany Arterberry is qualified to  
7 understand and protect M.H.'s rights and represents that she has no interests adverse to the minor  
8 she seeks to represent. In the renewed motion (Doc. 32), filed on September 1, 2023, M.H.'s  
9 attorney attests to the disclosure of attorney's interest that complies with E.D. Cal. Local Rule  
10 202(c).

11 Plaintiffs renewed motion satisfies the requirements for appointment of guardian ad litem  
12 under Fed. R. Civ. P. 17(c) and E.D. Cal. Local Rule 202.

13 CONCLUSION AND ORDER

14 For the foregoing reasons, it is HEREBY ORDERED:

- 15 1. Plaintiffs' renewed motion to appoint Tiffany Arterberry as guardian ad litem for M.H.  
16 (Doc. 32) IS GRANTED; and  
17 2. Tiffany Arterberry is appointed to act as guardian ad litem for Plaintiff M.H. and is  
18 authorized to prosecute the claims on M.H.'s behalf.

19 IT IS SO ORDERED.

20 Dated: September 5, 2023

  
21 UNITED STATES MAGISTRATE JUDGE

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